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## BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN K. MAYES  
Chairman

Arizona Corporation Commission

GARY PIERCE  
Commissioner

DOCKETED

PAUL NEWMAN  
Commissioner

APR 14 2010

SANDRA D. KENNEDY  
Commissioner

DOCKETED BY

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BOB STUMP  
Commissioner

IN THE MATTER OF THE APPLICATION  
OF ESCHELON TELECOM OF ARIZONA,  
INC., MOUNTAIN  
TELECOMMUNICATIONS OF ARIZONA,  
INC. AND ELECTRIC LIGHTWAVE, LLC  
FOR APPROVAL OF A FINANCING  
ORDER AUTHORIZING VARIOUS  
FINANCING TRANSACTIONS

DOCKET NOS. T-03406A-10-0032  
T-03432A-10-0032  
T-03054A-10-0032

DECISION NO. 71624ORDER

Open Meeting  
March 31 and April 1, 2010  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On January 29, 2010, Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona, Inc. and Electric Lightwave, LLC ("Integra Entities" or "Applicants"), filed an application with the Arizona Corporation Commission ("Commission") requesting authority for the Applicants to participate in various financing arrangements contemplated by their ultimate corporate parent, Integra Telecom, Inc. ("Integra Parent") or their immediate parent, Integra Telecom Holdings, Inc. ("Integra Holdings") pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285 and Arizona Administrative Code ("A.A.C.") R14-2-804, and, to the extent necessary, any other applicable statutes or rules. Additionally, the Applicants request expedited consideration and approval without a hearing.

2. The Applicants seek approval to encumber Arizona assets as security for up to \$950 million in debt financing.

Background of Applicants

## 3. The Company in its Application represents that:

- A. Integra Telecom, Inc. is a privately held Oregon company headquartered in Portland, Oregon. In Arizona, Integra Parent provides local telephone service, long distance calling and high-speed Internet access to small and mid-sized businesses through three wholly owned subsidiaries: Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona, Inc. and Electric Lightwave, LLC. Integra Telecom Holdings, Inc. is a privately held Oregon corporation. It is a direct subsidiary of Integra Parent and an intermediate holding company of the Integra Entities.
- B. In Arizona, all three Integra Entities are authorized to provide local exchange and other intrastate telecommunications services. Eschelon Telecom of Arizona, Inc. is authorized to provide service pursuant by Decision No. 62751, granted July 25, 2000. Mountain Telecommunications of Arizona, Inc. is authorized to provide service by Decision No. 60668, granted February 9, 1998. Electric Lightwave, LLC is authorized to provide service by Decision No. 59982, granted on January 16, 1997. The Integra Entities' primary operations and customer bases are located in the Phoenix and Tucson areas, with operations and business customers in other market areas throughout Arizona. In Arizona, the Integra Entities have over 240 employees, over 7000 miles of fiber, and over 10,000 customers, predominantly in the Phoenix metro area. The Integra Entities offer local dial tone, domestic and international long distance, high-speed Internet and data services (including digital subscriber line or DSL), voice messaging, and numerous ancillary services designed to support the communications needs of businesses.

The Applicant's Transaction

## 4. The Applicants represent that:

- A. The Applicants anticipate that over the next five years they will enter into various financing transactions to refinance existing long-term debt obligations with lower cost debt instruments, refinance existing long-debt maturities, finance new capital expenditures and provide working capital.<sup>1</sup> The Applicants seek advance approval to pledge their Arizona assets as security in connection with financings of up to \$950 million in debt financing and letters of credit being arranged by Integra Parent.
- B. The anticipated financings are purely financial in nature and will not alter the rates, terms, conditions or services offered by the Applicants in Arizona. The Applicants will remain wholly owned subsidiaries of Integra Parent and will

<sup>1</sup> In The Matter of the Application of Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona, Inc. And Electric Lightwave, LLC for Approval of a Financing Order Authorizing Various Financing Transactions, Docket No. T-03406A-10-0032, page 5, January 29, 2010

1 continue to provide telecommunications services in Arizona. Neither the  
2 deposit accounts nor the existing performance bonds and/or letters of credit of  
the Applicants will be pledged as security for any of the financings.<sup>2</sup>

3 C. Applicants state that the authorization requested will enable Integra Parent and  
4 its subsidiaries to capture favorable market conditions in a timely and efficient  
5 manner and thereby take advantage of opportunities to reduce its financing  
6 costs, obtain more attractive terms and conditions and relaxed covenant  
7 restrictions, better leverage its financial resources, and select the financing  
8 options most appropriate for the purpose of the debt. The flexibility afforded  
by the authorization will enable Integra Parent to strengthen its financial  
condition and create opportunities to enhance the respective competitive  
position of the Applicants in the Arizona telecommunications marketplace.<sup>3</sup>

9 Staff's Analysis & Recommendations

10 5. A.R.S. § 40-285 requires public service corporations to obtain Commission  
11 authorization to encumber certain utility assets. The statute serves to protect captive customers  
12 from a utility disposing of any of its assets that are necessary for the provision of service; thus, it  
13 serves to preempt any service impairment due to disposal of assets essential for providing service.

14 6. Further, A.A.C. R14-2-804(B) provides that a utility will not, without Commission  
15 approval, obtain a financial interest in any affiliate not regulated by the Commission, or guarantee,  
16 or assume the liabilities of such affiliate. Under R14-2-804(C), the Commission is to review the  
17 transaction to determine if it would impair the financial status of the public utility, otherwise  
18 prevent it from attracting capital at fair and reasonable terms, or impair the ability of the public  
19 utility to provide safe, reasonable and adequate service.

20 7. A pledge of the Applicants' Arizona's assets should not impair the availability of  
21 service to customers since the Applicants provide competitive services that are available from  
22 alternate service providers. Customers may still have exposure to losses to the extent they have  
23 prepaid for service or made deposits, therefore, any authorization for encumbrance should provide  
24 customer protection for prepayments and deposits.

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26 <sup>2</sup> In The Matter of the Application of Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona,  
27 Inc. And Electric Lightwave, LLC for Approval of a Financing Order Authorizing Various Financing Transactions,  
Docket No. T-03406A-10-0032, page 8, January 29, 2010

28 <sup>3</sup> In The Matter of the Application of Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona,  
Inc. And Electric Lightwave, LLC for Approval of a Financing Order Authorizing Various Financing Transactions,  
Docket No. T-03406A-10-0032, page 9, January 29, 2010

8. The Applicants' request for authorization "over the next five years" is not linked to market conditions or information evidencing the need for authorization over such an extended period. The flexibility sought by the Applicants through the Commission's authorization more logically argues that transaction speed is essential and that financing timeframes may be brief. Staff supports a timeframe not exceeding three years<sup>4</sup>.

9. On February 25, 2010, the Applicants' filed an affidavit of publication verifying public notice of its financing application. The Applicants published notice of its financing application in the Arizona Business Gazette on February 18, 2010. The Arizona Business Gazette is a weekly newspaper of general circulation in the county of Maricopa, Arizona.

10. The Applicants were found to be in Good Standing and in Compliance by the Customer Service and Compliance Sections of the Commission.

11. Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of the Company, would not impair its ability to attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and adequate service. Staff, therefore, recommends that the Commission authorize the Applicants' request to encumber their Arizona assets in connection with financings up to \$950 million.

12. Staff further recommends authorizing the Applicants to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted.

13. Staff concludes that a pledge of the Applicants' assets would not impair the availability of service to customers since the Applicants provide competitive services that are available from alternate service providers. Customers may still have exposure to losses to the extent they have prepaid for service or made deposits, therefore, Staff recommends approval of the application subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by the Applicants.

14. Staff further recommends that any authorization granted in this docket terminate three years from the date of the Commission's order in this matter.

<sup>4</sup> The Applicants indicated via email on March 10, 2010 that authorization for three years would be acceptable.

15. Staff further recommends that the Company file with Docket Control, as a compliance item in this matter, copies of the loan documents, within 60 days of the execution of any financing transaction authorized herein.

16. Staff does not believe the proposed transactions in this matter will materially change the operations of the Applicants.

### CONCLUSIONS OF LAW

1. Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona, Inc. and Electric Lightwave, LLC are public service corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. § 40-285.

2. The Commission has jurisdiction over Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona, Inc. and Electric Lightwave, LLC and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated March 16, 2010, concludes that it is in the public interest to grant approval for Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona, Inc. and Electric Lightwave, LLC to participate in various financing arrangements as discussed herein.

## ORDER

IT IS THEREFORE ORDERED that the application of Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona, Inc. and Electric Lightwave, LLC requesting approval to participate in the various financing arrangements described in Findings of Fact Nos. 5, 6 and 7 be and hereby is approved, as discussed herein.

IT IS FURTHER ORDERED that Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona, Inc. and Electric Lightwave, LLC are authorized to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted.

IT IS FURTHER ORDERED that the application of Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona, Inc. and Electric Lightwave, LLC subject to the condition that all customer deposits and prepayments be excluded from encumbrance and

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equivalent amounts be retained by Eschelon Telecom of Arizona, Inc., Mountain Telecommunications of Arizona, Inc. and Electric Lightwave, LLC.

IT IS FURTHER ORDERED that copies of executed security documents be filed with Docket Control, as a compliance item in this docket, within 60 days of the decision in this matter.

IT IS FURTHER ORDERED that the authorization granted shall terminate three years from the date of the Commission's order in this matter.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

  
CHAIRMAN


  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 14<sup>th</sup> day of April, 2010.

  
ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

SMO:AFF:lhmc\CH

1 SERVICE LIST FOR: ESCHELON TELECOM OF ARIZONA, INC., MOUNTAIN  
2 TELECOMMUNICATIONS OF ARIZONA, INC. AND ELECTRIC LIGHTWAVE, LLC

3 DOCKET NOS. T-03406A-10-0032, T-03432A-10-0032 AND T-03054A-10-0032

4 Mr. Michael Patten  
5 Mr. Timothy J. Sabo  
6 Roshka Heyman & DeWulf, PLC  
7 One Arizona Center  
8 400 East Van Buren Street, Suite 800  
9 Phoenix, Arizona 85004

10 Mr. J. Jeffery Oxley  
11 General Counsel  
12 Integra Telecom, Inc.  
13 1201 N.E. Lloyd Boulevard, Suite 500  
14 Portland, Oregon 97232

15 Mr. Steven M. Olea  
16 Director, Utilities Division  
17 Arizona Corporation Commission  
18 1200 West Washington Street  
19 Phoenix, Arizona 85007

20 Ms. Janice M. Alward  
21 Chief Counsel, Legal Division  
22 Arizona Corporation Commission  
23 1200 West Washington Street  
24 Phoenix, Arizona 85007  
25  
26  
27  
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